

LASSER HOCHMAN, L.L.C.
75 Eisenhower Parkway
Suite 120
Roseland, New Jersey 07068
(973) 226-2700
rzucker@lasserhochman.com
Attorneys for WH-Wallkill Five II, LLC

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re: Case No. 23-18993 (MBK)

RITE AID CORPORATION, et al. Chapter 11

Debtors. (Jointly Administered)

**REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE AND ALLOWANCE
OF GENERAL UNSECURED CLAIM ON BEHALF OF WH-WALLKILL FIVE II, LLC**

WH-Wallkill Five II, LLC (hereinafter "Wallkill") submits the following as its request for payment of an administrative expense and its general unsecured proof of claim in connection with the above matter:

1. Notices with respect to this request for payment and proof of claim should be sent to Richard L. Zucker, Esq., Lasser Hochman, LLC, 75 Eisenhower Parkway, Roseland, New Jersey, 07068-1694, telephone number 973-226-2700, Ext. 217, e-mail address rzucker@lasserhochman.com.

2. The name and address where payments should be sent is set forth in paragraph 1.

3. On or about September 1, 1997, Columbia Development Group, LLC, as landlord, and Rite Aid of Connecticut, Inc., as tenant, entered into a written lease (hereinafter "the Lease") relating to premises located at the southwest corner of First Avenue, and Elm Street (70 Elm Street)

in West Haven, Connecticut. The term of the Lease was twenty (20) years following the Commencement Date as defined in the Lease. A copy of the Lease is attached hereto as Exhibit A.

4. On or about October 13, 1997, Columbia Development Group, LLC assigned its interest in the Lease to Columbia Haven Group, LLC, and the latter agreed to be bound by all the terms, conditions, representations, warranties and covenants contained in the Lease. A copy of the assignment and assumption is attached hereto as Exhibit B.

5. On or about October 10, 1997, Columbia Haven Group, LLC and Rite Aid of Connecticut, Inc. entered into a First Amendment to Lease which, among other things, revised and modified various Articles of the Lease. A copy of the First Amendment to Lease is attached hereto as Exhibit C.

6. On or about February 12, 1998, Columbia Haven Group, LLC and Rite Aid of Connecticut, Inc. entered into a Second Amendment to Lease which deleted the first sentence of Article 9 of the Lease and replaced it with the language set forth in the Second Amendment. A copy of the Second Amendment to Lease is attached hereto as Exhibit D.

7. On or about July 7, 1998, Columbia Haven Group, LLC and Rite Aid of Connecticut, Inc. entered into an Agreement of Lease Commencement which, among other things, (a) set the commencement date of the Lease as May 22, 1998, (b) set the expiration date of the initial term of the Lease as May 31, 2018, (c) set the commencement date of the first through sixth of each five-year renewal period, and (d) set the amount of the annual base rent, and the amount of the equal monthly installments of rent, to be paid during each of the six renewal periods. A copy of the Agreement of Lease Commencement is attached hereto as Exhibit E.

8. On or about April 12, 2004, Columbia Haven, LLC assigned the Lease to JTCNET,

LLC, and the latter accepted the assignment of assignor's entire right, title and interest in and to the Lease. A copy of the Assignment and Assumption of Lease Agreement and Lease Guaranty is attached hereto as Exhibit F.

9. On or about October 25, 2007, JTCNET, LLC assigned the Lease to WH-Eastern States, LLC and Wallkill as tenants in common, and WH-Eastern States, LLC and Wallkill assumed and agreed to satisfy and/or perform all of the terms and conditions to be perform on the part of the landlord under the Lease. A copy of the Assignment, Assumption and Indemnity Agreement is attached hereto as Exhibit G.

10. On or about August 22, 2022, Wallkill and Rite Aid of Connecticut, Inc. entered into a Third Amendment to Lease which provided, among other things, that (a) effective on the date thereof, Rite Aid of Connecticut, Inc. exercised its next available option to renew the Lease for a period of five (5) years commencing June 1, 2023 and expiring May 31, 2028 (hereinafter "the renewal term"), and (b) during the renewal term, Rite Aid of Connecticut, Inc. agreed to pay minimum rent in the amount of \$198,195.00 payable in equal monthly installments of \$16,516.25 in advance on the first day of each month. A copy of the Third Amendment to Lease is attached hereto as Exhibit H. The Third Amendment to Lease was prepared by Rite Aid of Connecticut, Inc., and inadvertently, WH-Eastern States, LLC was not included as a tenant in common with Wallkill as the "Landlord" under the Third Amendment to Lease.

11. On October 15, 2023, Rite Aid of Connecticut, Inc. filed a petition under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware, Case No. 23-19006-MBK. The case is being jointly administered under the name of Rite Aid Corporation, Case No. 23-18993-MBK.

12. On December 26, 2023, the debtors filed a notice of rejection of certain executory contracts and/or unexpired leases, a copy of which is attached hereto as Exhibit I. Schedule 1 of the proposed rejected contracts included, as number 55, the Lease. The date of the proposed rejection effective date for the lease was December 31, 2023. A copy of the rejection notice is attached hereto as Exhibit I.

13. On January 26, 2024, Bankruptcy Judge Kaplan entered a sixth order approving the rejection of certain executory contracts and/or unexpired leases and the abandonment of certain personal property, if any. Schedule 1 to the order, entitled “Rejected Contracts”, included, as number 55, the Lease. The effective date of the rejection of the Lease was December 31, 2023. A copy of the rejection order is attached hereto as Exhibit J.

14. Wallkill is entitled to the allowance of a general unsecured claim with respect to the Lease as permitted by §502(b)(6) of the Bankruptcy Code. The amount of the general unsecured claim has two components, one based upon the unpaid rent due under the Lease, without acceleration, on October 15, 2023, the date on which the bankruptcy petition was filed, and the other based upon the rent reserved by the Lease, as amended, without acceleration, for one year following October 15, 2023, the date of the filing of the bankruptcy petition.

16. Regarding the unpaid rent due under the Lease on October 15, 2023, Article 37 of the Lease, entitled “Payment of Real Estate Taxes” provides as follows:

Tenant shall pay directly to the taxing authority prior to the accrual of any penalties, fees or additional charges, all water and sewer charges, real estate taxes and installments of assessments (including installments of special assessments) required to be paid during the term with respect to the Property, for the term pro-rated for any period partially within the term.

Attached hereto as Exhibit K is the real estate tax bill for 2023 relating to the real property described in the Lease. From July 1, 2023 to October 14, 2023 (106 days), the pro-rata share of the 2023 real estate taxes for which Rite Aid of Connecticut, Inc. is liable is $\$36,372.68 \times 106 \div 184 = \mathbf{\$20,953.83}$

17. Regarding the rent reserved by the Lease, as amended, without acceleration, for one year following October 15, 2023, the date of the filing of the bankruptcy petition, this amount is **\$198,195.00**. See Exhibit H, ¶ 2.


18. The total amount of Wallkill's general unsecured proof of claim for which it seeks allowance is $\$20,953.83 + \$198,195.00 = \mathbf{\$219,148.83}$.

19. In addition to the allowance of a general unsecured proof of claim in the amount of \$219,148.83, Wallkill is also entitled to the payment of an administrative expense on account of the real estate taxes that Rite Aid of Connecticut, Inc. did not pay for the 78 days commencing on October 15, 2023 and ending on December 31, 2023, the effective date of the Lease's rejection, which said amount is **15,418.85** and represents $\$36,372.68 \times 78 \div 184$.

20. The amount of all payments has been credited for the purpose of making this proof of claim.

WH-WALLKILL FIVE II, LLC

DATED: February 14, 2024


STEFANO A. MASI
Authorized Representative

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

